

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

361

By: Senator Bookout

For An Act To Be Entitled

"AN ACT TO AMEND SECTIONS 502, 504, 505, 506, 507, 509,  
AND 510 OF CHAPTER 93 OF TITLE 16 OF THE ARKANSAS CODE  
OF 1987 ANNOTATED; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code of 1987 Annotated 16-93-502 is hereby amended to read as follows:

"16-93-502. Definitions. As used in this subchapter, unless the context otherwise requires:

(1) 'Alternative service program' means any program which provides corrective and preventive guidance or training designed to rehabilitate eligible offenders and to protect the public by correcting the antisocial tendencies of eligible offenders, which is certified by the State Board of Parole and Community Rehabilitation and which may operate in relation to private and public social institutions, organizations, and agencies of the state and local communities located throughout the state, including, but not limited to, the following:

(A) Employment resources - private industry, labor unions, employment service, and civil service systems;

(B) Educational resources - vocational and technical, secondary, college and university, adult basic education, private and commercial training, government and private job development, and skills training;

(C) Social welfare services - public assistance, housing, rehabilitation services, mental health services, counseling assistance, neighborhood centers, unemployment compensation, and private social service agencies of all kinds;

(D) Law enforcement entities - federal, state, and local law enforcement personnel, particularly specialized units providing public

information, diversion, and services to juveniles;

(E) Other relevant community organizations and groups - ethnic and cultural groups, recreational and social organizations, religious and self-help groups, and other devoted to political or social action.

(2) 'Board' means the State Board of Parole and Community Rehabilitation.

(3) 'Department' means the Department of Correction of the State of Arkansas.

(4) 'Director' means the Director of the Department of Correction of the State of Arkansas.

(5) 'Diversion' means the placing on probation or sentencing by a trial court of an eligible offender under the provisions of this subchapter for the purposes of corrective and preventive guidance or training designed to rehabilitate the eligible offender and to protect the public by correcting the anti-social tendencies of the eligible offender.

(6) (A) 'Eligible offender' means any person convicted of a felony offense other than a capital felony offense, or murder in the first degree, murder in the second degree, rape, kidnapping, or aggravated robbery, and who has never been previously convicted of a felony offense, and whose interests, and the interests of the state, in the opinion of the sentencing trial court, could be better served by diversion under the provisions of this subchapter than by sentencing under other applicable penalty provisions established by law.

(B) Those persons under the age of twenty-six (26) years at the time of the commission of a felony offense, other than a capital felony offense, murder in the first degree, murder in the second degree, rape, kidnapping, or aggravated robbery, for which they are convicted, shall still be "eligible offenders" under this subchapter if they had one (1) previous felony conviction other than a conviction for a capital offense, murder in the first degree, murder in the second degree, rape, kidnapping, or aggravated robbery.

(C) A person over the age of twenty-six (26) who has one (1) or more previous felony convictions shall not be an "eligible offender" under this subchapter.

(D) A person over eighteen (18) years of age who is convicted of the offense of delivering controlled substances to a minor, as prohibited in Arkansas Code 5-64-701(a)(2), is not an eligible offender

under this subchapter.

(E) For purposes of this subchapter, the fact that a felony conviction has been expunged under this subchapter shall not render a person an eligible offender.

(7) (A) 'Expunge' means to make an entry upon the official records kept in the regular course of business by law enforcement agencies and judicial officials evidencing the fact that the records are those relating to eligible offenders as so determined and sentenced or paroled under the provisions of this subchapter; that the records shall be sealed, sequestered, treated as confidential and only available to law enforcement and judicial officials; and further signifying that the defendant was completely exonerated of any criminal purpose and that the disposition shall not affect any civil rights or liberties of the defendant.

(B) 'Expunge' shall not mean the physical destruction of any official records of law enforcement agencies or judicial officials.

(8) 'Transfer' means placement by the Board of an eligible offender within an alternative service program for the purposes of corrective and preventive guidance or training designed to rehabilitate the eligible offender and to protect the public by correcting the antisocial tendencies of the eligible offender.

(9) 'Trial court' means any court of this state having jurisdiction of an eligible offender and the power to sentence the eligible offender pursuant to the provisions of this subchapter."

SECTION 2. Arkansas Code of 1987 Annotated 16-93-504 is hereby amended to read as follows:

"16-93-504. Supplemental nature of subchapter. (a) The duties, authorities, responsibilities, and discretions existing or vested with the Department of Correction, the director, and the Board of Correction shall in no way be affected by the provisions of this subchapter. The provisions of this subchapter shall be considered cumulative with, and in addition to, those existing duties, authorities, responsibilities, and discretions.

(b) This subchapter shall be cumulative and in addition to, or serve as an alternative to, any other existing law or laws providing penalties for or sentencing of persons convicted of the commission of felony offenses."

SECTION 3. Arkansas Code of 1987 Annotated 16-93-505 is hereby amended to read as follows:

"16-94-505. State Board of Parole and Community Rehabilitation. The State Board of Parole and Community Rehabilitation shall have the following duties and responsibilities:

- (1) Certify alternative service programs to which eligible offenders may be diverted or transferred under the provisions of this subchapter;
- (2) Notify the several courts of this state having criminal jurisdiction of the availability of certified and approved alternative service programs;
- (3) Establish standards for the certification of alternative service programs;
- (4) Establish circumstances under which the records of eligible offenders sentenced or placed on probation under this subchapter should not be expunged, pursuant to Arkansas Code 16-93-510;
- (5) Establish rules and regulations relating to the operation of alternative service programs and the supervision of eligible offenders participating therein, pursuant to Arkansas Code 16-93-506;
- (6) Promote cooperation among the courts and various law enforcement agencies of this state in the implementation of the provisions of this subchapter and of the intent and spirit of this subchapter;
- (7) Direct entities and persons involved in the implementation of this subchapter as to manners of implementation which will ensure the safety and welfare of the people of this state;
- (8) Advise the Board of Correction and any other entity, public or private, involved with the implementation of this subchapter and its operation, of any other rules, regulations, and procedures which may be required or deemed appropriate for the implementation or operation of this subchapter.

SECTION 4. Arkansas Code of 1987 Annotated 16-93-506 is hereby amended to read as follows:

"16-93-506. Operation and supervision of alternative service programs.

(a) The Board shall promulgate rules and regulations relating to the operation of alternative service programs and supervision of eligible

offenders participating therein and the termination of that participation, including, but not limited to:

(1) The terms, conditions, and qualifications of the diversion of the eligible offender by the trial court as provided in Arkansas Code 16-93-507(b) (4) and (5);

(2) Receipt of compensation by the eligible offender while participating in an alternative service program; and

(3) Allocation of compensation received by an eligible offender while participating in an alternative service program, including designation to the Department of Correction of a percentage of any compensation received for the purposes of defraying the costs to the Department of establishing and operating alternative service programs or the costs of the offender's custody and care.

(b) The Board shall ensure that any eligible offender participating in any alternative service program is properly supervised so as to ensure the safety and welfare of the people of the state during the period of participation in an alternative service program."

SECTION 5. Arkansas Code of 1987 Annotated 16-93-507 is hereby amended to read as follows:

"16-93-507. Probation and sentencing alternatives.

(a) (1) Upon the conviction of any person, if it shall appear to the trial court that the person may be an eligible offender as defined in this subchapter, the trial court shall postpone the imposition of any sentence for a period not to exceed thirty (30) days.

(2) During the period of postponement, the trial court shall require the defense counsel of the person, the prosecuting authority, the probation officer, and other persons whom the trial court believes have knowledge or information relevant to the sentencing of the convicted person, to submit to the trial court written reports establishing or negating the eligibility of the offender and the propriety of diverting the offender under the provisions of this subchapter.

(b) Upon the determination by the court, after an appropriate hearing, that the offender is an eligible offender, as defined by this subchapter, and that the offender's diversion is proper, the court may divert the eligible offender in a manner consistent with the following alternatives:

(1) Suspend the imposition of the sentence or place the eligible offender on probation;

(2) Divert the eligible offender to an alternative service program, defined by this subchapter, for a designated period of time not to exceed three (3) years and consistent with the rules and regulations established by the Board for the operation of alternative service programs and the supervision of eligible offenders participating in those programs. During the designated period, the sentencing trial court shall maintain jurisdiction over the eligible offender so sentenced.

(3) In the event a person sentenced under subdivision (1) or (2) of this subsection violates any terms or conditions of his sentence or probation, revocation of the sentencing or probation shall be consistent with the procedures established by law for the revocation of probation. Upon revocation, the person shall thereafter be sentenced consistent with subdivision (4) or (5) of this subsection;

(4) Sentence the eligible offender to the custody of the Department of Correction under applicable penalty provisions provided by law for the offense for which he is convicted, subject to the following:

(A) The eligible offender so sentenced shall be subject to transfer by the Board to an alternative service program, as provided under Arkansas Code 16-93-509; and

(B) The eligible offender shall be immediately eligible for parole under the rules and procedures existing or established by the Board; or

(5) Sentence the eligible offender to the custody of the Department of Correction under applicable penalty provisions provided by law for the offense for which he is convicted, subject to the following:

(A) The eligible offender so sentenced shall be subject to transfer by the Board to an alternative service program under Arkansas Code 16-93-509; and

(B) The offender shall be eligible for pardon or parole in the same manner and within the same time as he would have been had he not been sentenced under the provisions of this subchapter as an eligible

offender."

SECTION 6. Arkansas Code of 1987 Annotated 16-93-509 is hereby amended to read as follows:

"16-93-509. Postcommitment transfer. (a) (1) Upon the commitment of an eligible offender under Arkansas Code 16-93-507(b) (4) and (5), the Board may conditionally transfer an eligible offender to an alternative program, as defined by this subchapter, in accordance with the rules and regulations promulgated by the Board.

(2) Transference to, or removal from, alternative service programs shall be in accordance with all legal procedural requirements.

(b) (1) The Department of Correction and the Board are authorized to release medical and psychological data in their possession to an alternative service program concerning an eligible offender transferred to that alternative service program.

(3) The alternative service program shall use any medical or psychological data received from the Department of Correction and the Board in compliance with rules concerning the use of the data as adopted by the Board."

SECTION 7. Arkansas Code of 1987 Annotated 16-93-510 is hereby amended to read as follows:

"16-93-510. Certificate of expungement. (a) Upon the completion of sentence or probation imposed under this subchapter, the sentencing court, in the case of an offender sentenced under Arkansas Code 16-93-507(b) (1) or (2), and the Board, in the case of a person sentenced under Arkansas Code 16-94-506(b) (4) or (5), shall direct that the record of the eligible offender be expunged of the offense for which the eligible offender was convicted, except under such circumstances as may be determined by rules and regulations promulgated by the Board.

(b) In the case of expungement, the eligible offender shall be entitled to a certificate of expungement to that effect.

(c) Upon the expungement of the record, as to that conviction, the person whose record was expunged may thereafter state in any application for employment, license, civil right, or privilege, or in any appearance as a witness, that he has not been convicted of the offense for which he was

convicted and sentenced or placed on probation under the provisions of this subchapter."

SECTION 8. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.